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IN THE

Supreme Court of the United States

No. 75-1064

JACK B. KREMENS, Individually and as Hospital Director of Haverford State Hospital; FRANK S. BEAL, Individually and as Secretary of Public Welfare of the Commonwealth of Pennsylvania; WILLIAM B. BEACH, JR., Individually and as Deputy Secretary for Mental Health and Mental Retardation of the Department of Public Welfare of the Commonwealth of Pennsylvania, *Appellants*,

v.

KEVIN BARTLEY; STEVE GENTILE; LESLIE LEVINE; VICKI MATHEWS; MARK WEAND; Minors, Through Their Next Friend, Individually and on Behalf of All Others Similarly Situated, *Appellees*.

On Appeal From the Judgment of the United States District Court for the Eastern District of Pennsylvania.

SPONSORSHIP OF ATTORNEY GENERAL, MOTION FOR LEAVE TO FILE BRIEF, AND BRIEF AMICUS CURIAE FOR THE SUPREME COURT OF PENNSYLVANIA.

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Appellants,

v.

KEVIN BARTLEY; STEVE GENTILE; LESLIE LEVINE; VICKI MATHEWS; MARK WEAND; MINORS, THROUGH THEIR NEXT FRIEND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Appellees.

—

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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The action in which the Supreme Court of Pennsylvania here seeks to appear and present its views *amicus curiae*, was brought on behalf of a class of juveniles, arguing that before members of plaintiff class could be committed to hospitals by their parents for care or treatment, they were constitutionally entitled to a hearing held in accordance with due process requirements. The lower court upheld and elaborated in some detail on plaintiffs'

constitutional entitlement to a counseled hearing before a neutral tribunal.

Although it conceded that the Commonwealth had no constitutional duty to provide a judicial or court hearing, the lower court imposed upon the courts of the Commonwealth the obligation to provide hearings—both prospectively and, within 120 days, to all members of plaintiff class presently hospitalized without benefit of a hearing. Thus, the Pennsylvania judiciary was ordered to provide relief although the Constitution did not require it to do so and although neither it, nor the Commonwealth itself as opposed to several of its executive officers, was a party to or had had representation in the proceedings before the court.

It would be inappropriate for the Pennsylvania Supreme Court to take a position on the merits of this case, *i.e.*, whether pre-commitment hearings of any sort are constitutionally required. However, in view of the fact that the lower court has ordered the Pennsylvania courts to provide the relief prescribed, the Pennsylvania Supreme Court is at least entitled to the opportunity to be heard on this question.[1] Accordingly, the Supreme Court of Pennsylvania submits the following statement of sponsorship by the Attorney General which, pursuant to Rule 42(4) of the Rules of this Court, satisfies the preconditions for filing the attached brief *amicus curiae*, despite the fact that counsel for appellees has refused to consent to this filing.

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1. It is believed that the Pennsylvania Supreme Court has a right to intervene. See **United States v. Terminal Railroad Association**, 236 U. S. 194, 199 (1915); *cf.* **Hunter v. Ohio ex rel. Miller**, 396 U. S. 879 (1969); **United States v. Paramount Pictures, Inc.**, 334 U. S. 131, 176-78 (1948). Since intervention is unusual, however, and rarely if ever uncontested, and in view of the fact that the Attorney General of Pennsylvania has agreed to provide sponsorship, the Pennsylvania Supreme Court has chosen to follow the more traditional route of appearing as *amicus curiae*.

SPONSORSHIP OF THE ATTORNEY GENERAL OF PENNSYLVANIA.

Under Article 5 of the Pennsylvania Constitution, the Pennsylvania courts, like the Article III Courts of the United States, constitute one branch of the tripartite government of the Commonwealth. As such, they are as much the Commonwealth as are the legislative and executive branches, and equally as entitled to appear as *amicus curiae* before this Court, even though opposing counsel would prefer that they did not. Nor does the Supreme Court of Pennsylvania become any less the Commonwealth for purposes of presenting a unique interest under Rule 42(4) simply because certain executive officers of Pennsylvania are the named appellants and are represented, as required by statute, by the Attorney General.

The interest sought to be asserted by the Pennsylvania courts is different than that of the Commonwealth generally and must be separately represented. First, this Office has declined to represent the judiciary as an independent branch of government on Constitutional grounds of separation of powers, *see* Attorney General's Opinion No. 75-9, Pennsylvania Bulletin, Vol. 5, No. 10 (March 8, 1975). Second, the named defendants are appealing the decision on the merits and are also challenging the legality of the relief ordered. The interest of the Pennsylvania courts focuses exclusively on the latter issue. It is altogether appropriate that the distinct interest of the Pennsylvania Supreme Court be heard in this latter issue.

Therefore, being charged with the duty of representing the named defendants in this case and recognizing the substantiality of the issues which the Pennsylvania judiciary would put before this Court, this Office undertakes to sponsor pursuant to Rule 42(4), and urges this Court to

afford hearing as *amicus curiae* to, the Supreme Court of Pennsylvania.

/s/ ROBERT P. KANE,
Robert P. Kane,
Attorney General of the
Commonwealth of Pennsylvania.

ALTERNATE MOTION FOR LEAVE TO FILE BRIEF ON BEHALF OF THE SUPREME COURT OF PENNSYLVANIA, *AMICUS CURIAE.*

Alternatively, if the above statement of sponsorship should in any way fail to qualify the Pennsylvania Supreme Court to appear as *amicus curiae* under Rule 42(4), then, pursuant to Rules 35 and 42 of the Rules of the Court, the Supreme Court of Pennsylvania respectfully moves this Court for leave to file the attached brief *amicus curiae*, and in support thereof, states the following:

1. The Pennsylvania Supreme Court is the highest court in the Commonwealth and is charged by the Constitution of the Commonwealth with general supervisory and administrative authority and empowered to prescribe general rules governing practice, procedure and the conduct of the Pennsylvania courts. Pennsylvania Constitution, Article 5, Sections 1, 10. It is, therefore, the proper party to protest both the burden and the affront implicit in a lower federal court's imposing on the Pennsylvania judiciary the duty of both prospective and retrospective implementation of the prescribed hearing procedures pending creation by the legislature of an alternative non-judicial tribunal, which is all that the lower court has held that the Constitution requires.

2. In his December 1, telegram joining the Commonwealth in its request for a stay, Chief Justice Benjamin R. Jones of the Pennsylvania Supreme Court informed this Court that the estimated six to eight thousand recommitment hearings ordered to be held by the Pennsylvania judiciary within the next 120 days [2] would result in ". . .

2. In the telegram it was inadvertently stated that five months, rather than four, were to be permitted the Pennsylvania courts to comply with the order of the court below. The time prescribed is, of course, four months.

overwhelming and disrupting the judicial systems of Pennsylvania which are already overburdened with regular court business."

Of longer-range significance, however, is the fact that, in imposing upon the courts of the Commonwealth a procedure which the Constitution does not require to be judicially provided, the lower court utterly ignored the principles of comity and mutual respect which this Court has repeatedly held to be necessary to the proper functioning of our federal system. The lower court's manifest disregard for the sovereign status of a parallel state court system is underlined by the fact that neither the Pennsylvania Supreme Court nor any other unit of the Pennsylvania judicial system was even a party to the litigation before the lower court.

3. While the interests sought to be vindicated by the Pennsylvania Supreme Court are of vital importance to the Commonwealth generally, they are distinct from and more appropriately asserted separately from the interests of the named executive officers in this appeal. Thus, the Attorney General has declared himself constitutionally barred from representing the state judiciary, Attorney General's Opinion No. 75-9, Pennsylvania Bulletin, Vol. 5, No. 10 (March 8, 1975).

4. As soon as the jurisdictional statement was prepared, the Pennsylvania Supreme Court requested the parties herein to give their consent to its filing a brief as *amicus curiae*. Counsel for appellants gave immediate consent. At that time, counsel for appellees expressed the belief that the request was premature; however, when on May 3, 1976, he refused consent, he declined to state why he had agreed to all requests to file briefs *amicus* except the request of the Pennsylvania Supreme Court. It is in the belief that this Court needs to have the benefit of the views

of the Pennsylvania Supreme Court, that this Court is respectfully urged to accept the attached brief *amicus curiae*.

WHEREFORE, the Pennsylvania Supreme Court requests this Court to grant it leave to file the brief *amicus curiae* annexed hereto by virtue of the sponsorship of the Attorney General of Pennsylvania under Rule 42(4), or if by any chance the Court should deem such sponsorship insufficient, then on the Alternate Motion of the Supreme Court of Pennsylvania on behalf of the judicial system of the Commonwealth.

/s/ BERNARD G. SEGAL,
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Dated: June 4, 1976.

IN THE

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Appellees.

ON APPEAL FROM THE JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

BRIEF FOR THE SUPREME COURT OF PENNSYLVANIA, *AMICUS CURIAE.*

I. INTEREST OF *AMICUS CURIAE.*

This appeal presents two questions: the first is whether and to what extent the Constitution requires that juveniles not be committed to hospitals by their parents for care or

treatment without a counselled adversary hearing; the second is whether a United States District Court may order that a state court system provide the hearings in such cases even though that court has held that the Constitution requires only that hearings be provided before some neutral tribunal. One added factor is that none of the Pennsylvania courts was party to the action in the lower court.

The first issue was posed by plaintiffs' complaint in the court below. However, in ordering relief, that court went beyond its finding that due process demands that the state provide hearings before a neutral tribunal and required that the prescribed hearings be provided, in fact, by the Pennsylvania courts. It is only with respect to this second issue that the Pennsylvania Supreme Court wishes to be heard as *amicus* in opposing the order of the lower court.

The Supreme Court of Pennsylvania is responsible, both symbolically and literally, for the judicial branch of government in Pennsylvania. It is the highest court in the Commonwealth; in addition, since the creation of a unitary court system in 1968, it is constitutionally charged with general supervisory and administrative authority and empowered to prescribe general rules governing practice, procedure and the conduct of the Pennsylvania courts. Pennsylvania Constitution, Article 5, sections 1, 10.

Thus, the Pennsylvania Supreme Court actually has more than an *amicus* interest in this case, but is, in fact, directly adversely affected by the order appealed from insofar as it imposes on the Pennsylvania court system the burden of both prospective and retrospective implementation of the prescribed hearing procedures unless and until creation by the legislature of some alternate tribunal.[1]

1. As indicated in the telegram sent by Chief Justice Benjamin R. Jones to this Court, joining the Commonwealth in its request for a stay, the court had originally contemplated formal intervention in this action. While such an option would appear to be available

As a practical matter, the Pennsylvania court system simply does not have the resources or facilities to provide an estimated six to eight thousand recommitment hearings within the required 120 days without severely compromising its capacity otherwise to see to the administration of justice in Pennsylvania.

Of broader significance, however, is the affront such an order offers to those basic principles of federalism which, where there are constitutionally permissible alternatives, restrain a federal court from imposing obligations upon an independent state court system which is not even a party to the proceedings before it.

The interest thus sought to be asserted by the Pennsylvania Supreme Court is not simply that of the Commonwealth generally; and this is particularly so since the burden imposed upon the Pennsylvania judiciary came as the price of deference which the court below chose to extend to the legislative branch of the state government.

1. (Cont'd.)
under the circumstances, the court decided to proceed as expeditiously as possible by following the more usual route of filing this brief, *amicus curiae*, particularly in view of the sponsorship of the Attorney General of Pennsylvania under Rule 42(4).

II. ARGUMENT.

It is basic to that unity of philosophical and political principles which this Court has recently referred to as "Our Federalism,"[2] that except where the Constitution permits no alternative, a federal court may not exercise its equity power in a manner which would interfere with a state's control of its internal governance. Moreover, such considerations of comity have been followed by this Court with particular care as regards the deference to be accorded a state judicial system by its federal counterpart. The balance between federal and state power which has been thus deliberately and thoughtfully developed is destroyed when a federal court feels free not only to dictate to a state the manner in which it is to discharge its constitutional obligations, but to require (without constitutional necessity) an independent state court system to carry out its orders.

A. A Federal Court May Not Enjoin a State To Take Action Which Is Not Constitutionally Required.

The idea that the task of providing preliminary and final commitment hearings should be assigned to the courts of Pennsylvania arrived late in the proceedings below. The original complaint sought no more than a "disinterested and impartial decision maker" (14a).[3] The court in its opinion found the need for no more than an "unbiased tribunal" (40a). The idea of requiring the Pennsylvania courts to provide a forum for these hearings "until the legislature acts" appeared for the first time in plaintiffs' proposed order (66a). Despite the facts that plaintiffs' counsel had never argued that a court hearing was required, that the Attorney General submitted a proposed order which gave clear indication of the burden which would be placed on the Pennsylvania courts by plaintiffs' proposed order (74a-75a), that the Pennsylvania courts were not a party to the proceedings, and that the court below not only did not find a need for court hearings, but specifically recognized the power in the legislature to establish "an alternate neutral tribunal to conduct the probable cause and full commitment hearings," (80a) the court adopted plaintiffs' proposal and "declared that the present facilities of the Commonwealth system be used for these hearings" (*id*). The Attorney General took appropriate exceptions, noting that the paragraph of the court's order in question

> ". . . designates the Commonwealth Court system as the judicial system for the probable cause and full commitment hearings. This Court is thus creating a cause of action in a separate judicial system without a present legislative or common law foundation. . . . It is unclear and a matter of substantial controversy whether a Federal District Court has the authority under the Constitution of the United States or any Act of Congress to exercise such direction and control over the Commonwealth's judicial branch of government and its judicial officers."

(90a-91a). Nevertheless, the court below persisted in using the language originally proposed by plaintiffs and adopted in the court's proposed order. See 100a. In so doing, the court below interfered with the most basic constitutional decision of the Commonwealth of Pennsylvania: the allocation of powers and duties among the executive, judicial and legislative branches of government. And it did so at a hearing at which neither the judicial nor the

2. **Younger v. Harris**, 401 U. S. 37, 44 (1971).

3. References to "a" pages are to the Appendix to the Jurisdictional Statement.

legislative branches of government nor any officers or agents of either was a party.[4]

The issue here is not whether the plaintiffs are entitled to relief, but whether they are entitled to the relief granted them in derogation of the legitimate interests of the courts of Pennsylvania.

The constitutional basis on which the court below struck down portions of Pennsylvania's Mental Health and Mental Retardation Act ("The Act"),[5] was that a juvenile committed to a mental institution is entitled, *inter alia*, to a hearing before a neutral tribunal. However, when the court went on to order that unless or until the state legislature should constitute such a neutral tribunal, hearings must be provided in fact by the Commonwealth court system, and that these hearings must be provided not only for juveniles committed in the future, but for every juvenile presently incarcerated pursuant to the invalidated provisions of the Mental Health Act (100a, 105a), it went beyond any constitutional mandate.

Such an order is wholly unmindful of those essential principles of federalism which this Court has held must control the availability and scope of federal equitable relief in "a system of federal courts representing the Nation,

4. After the court below had written its proposed order, the office of the Court Administrator of Pennsylvania became aware of the existence of the decision of the court and was given permission to make proposals with respect to the drafting of the final order concerning the question of how the Pennsylvania courts would deal with the "large potential hearing responsibility which the decision places upon our state trial system." Letter, Jonathan Vipond, III, Legal Assistant to the Court Administrator of Pennsylvania, to the Honorable Daniel H. Huyett, III, dated October 15, 1975. Plainly, Mr. Vipond believed that he had been invited not to participate in the decision of whether the state courts were to be forced to conduct hearings, but only to aid in suggesting how the state courts would best carry out the duty imposed upon them by the federal court below.

5. The relevant portions of the Act are quoted in full at pp. 4-5 of the Jurisdictional Statement.

subsisting side by side with 50 state judicial, legislative and executive branches . . .". **Rizzo v. Goode,** 44 U. S. L. W. 4095, 4100 (U. S. Jan. 21, 1976).

Whether or not the court below acted properly when it found the Pennsylvania juvenile commitment procedure lacking in due process and enjoined its enforcement, that court had no authority to impose upon the Commonwealth —specifically the courts of the Commonwealth—an alternative procedure which, however salubrious, is not constitutionally required.

This is precisely the teaching of this Court's decision in **Gerstein v. Pugh,** 420 U. S. 103 (1975), a class action brought under 42 U. S. C. § 1983 to challenge the adequacy of Florida's pre-trial detention procedures. There, as here, the lower court had merely declared a constitutional right to a predetention probable cause determination, but had set up detailed procedures for an adversary hearing to implement that right. There, this Court concluded that the procedures—in contrast to the right they sought to protect—were not constitutionally required, and the lower court's opinion and order here make it equally clear that the Constitution does not require the state court hearings which the lower court, nevertheless, ordered. There, this Court held that it was improper for the lower courts to impose upon the state court system procedures not required by the Constitution. The same conclusion is appropriate here.

In leaving the state and its courts free to create whatever procedures they might find appropriate within the constitutional framework, this Court stated (420 U. S. at 123):

> "Although we conclude that the Constitution does not require an adversary determination of probable cause, we recognize that state systems of criminal

> procedure vary widely. There is no single preferred pretrial procedure, and the nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole. While we limit our holding to the precise requirement of the Fourth Amendment, we recognize the desirability of flexibility and experimentation by the States."

The court below showed no such respect for the Pennsylvania courts, although it did recognize the right of the legislature, should it choose, to create alternative procedures. But, by placing the burden on the state courts to provide hearing so long as the legislature did not develop an alternative neutral tribunal, the court removed all pressure on the legislature to develop such alternative procedures.

The court below had no power to require the Pennsylvania courts to conduct commitment hearings when the Constitution, by its own admission, did not require a court hearing. Certainly it had no right to limit the courts to the use of their present facilities when, again by its own admission, the Constitution would be satisfied by the appointment of unbiased masters to conduct neutral hearings. The only question which the court below should have reached under this Court's decision in **Gerstein** is whether the Constitution required the relief which the court sought to grant; otherwise, the court had no power to interfere with the state's freedom to allocate the hearings to any constitutionally satisfactory body. See 420 U. S. at 125-26, n. 27; *see also* **Hague v. C. I. O.,** 307 U. S. 496, 518 (1939).

Even more recently in **Rizzo v. Goode,** *supra,* this Court made clear that a federal court may not enjoin a state to adopt merely prophylactic procedures. Thus, in the absence of a constitutional right to citizens' grievance procedures, the Court held that the district court's attempt

to impose such procedures upon the Philadelphia Police Department via injunctive decree ran sharply counter to "'the well-established rule that the Government has traditionally been granted the widest latitude in the 'dispatch of its own internal affairs,' [citations omitted].'" 44 U. S. L. W. at 4100.[6]

Thus, there was every reason for the court below to defer to the principles of comity which would have left to the government of Pennsylvania—including the Pennsylvania courts—the freedom to develop a constitutionally permissible hearing procedure. The court below, itself, had recognized that there are constitutionally permissible alternatives to conducting preliminary and final commitment hearings, as well as some six to eight thousand recommit-

6. There are only two classes of cases which are exceptions to the general rule that a federal court will not attempt to dictate state procedures.

The first class of cases are those where, having been given ample opportunity to develop constitutionally adequate procedures, a state has refused to comply with an announced constitutional requirement. Thus, for example, federal courts have been held to have power to fashion specific orders in reapportionment and school desegregation cases after the states have defaulted in their obligation to proffer acceptable remedies. See *e.g.,* **Reynolds v. Sims,** 377 U. S. 533, 586 (1964); **Swann v. Charlotte-Mecklenberg Board of Education,** 402 U. S. 1, 16 (1971); **Griffen v. County School Board,** 377 U. S. 218, 233-234 (1964). In such cases, a federally defined remedy becomes the only means of vindicating the constitutional rights in question.

Similarly, where the Constitution, itself, prescribes the appropriate procedure for vindication of the right involved, a federal court has no alternative but to require the states to comply with that procedure. Thus, in **Gideon v. Wainwright,** 372 U. S. 335 (1963) (right to counsel in criminal prosecution), and **In re Gault,** 387 U. S. 1 (1967) (right to counselled adversary hearing in delinquency proceedings), the criminal context left no room under the Constitution for any solution other than the provision of judicial hearings. On the other hand, this Court specifically noted in **Goldberg v. Kelly,** 397 U. S. 254 (1970), with respect to the requirement of a hearing prior to the termination of welfare benefits that "the pre-termination hearing need not take the form of a judicial or quasi-judicial trial." *Id.* at 266.

ment hearings in the Pennsylvania courts. See, *e.g.*, 39a-41a, 80a, 100a. Nor has the Commonwealth given the federal courts any reason to believe that it will not act with due speed and care to provide such a constitutional alternative; on the contrary, even after the institution of this action, the Department of Public Welfare acted on its own initiative to adopt new regulations which at least partially cured the alleged constitutional infirmities of the Act. See 25a-27a. Finally, the lower court clearly could have afforded the Commonwealth a proper opportunity to comply with its order without causing irreparable harm to any member of the appellee class who believes himself improperly committed since an action in habeas corpus is statutorily authorized and available here to provide full and adequate relief.[7]

Under such circumstances the federal district court had no power to upset the " 'special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.' [citations omitted]," which dictated judicial forbearance in this case. **Rizzo v. Goode,** *supra*, 44 U. S. L. W. at 4100.

7. Section 426 of the Mental Health and Mental Retardation Act of 1966, Act of October 20, 1966, Special Sess. No. 3, P. L. 96, 50 P. S. § 4426, provides that any person committed or detained pursuant to that act may petition for a writ of habeas corpus based upon, *inter alia*, "the insufficiency or illegality of the proceedings leading to such person's commitment . . ."

Appellants have argued that under this Court's decision in **Preiser v. Rodriguez,** 411 U. S. 475 (1973), the remedy at § 426 is exclusive and precludes any retroactive application of the injunctive relief ordered below. Jurisdictional Statement, pp. 15-18. Without expressing a position on the merits, at least it is clear that the remedy provided at § 426 obviates any claim that irreparable injury would result were Pennsylvania afforded the normal deference due a sovereign state by a federal district court.

B. Federal Equity Power Is Most Severely Limited Where It Would Have the Effect of Interfering With a Parallel State Court System.

As this Court said in **Rizzo v. Goode,** *supra,* the principles of federalism which govern generally the relationship between federal courts and state governments were "initially expounded and perhaps entitled to their greatest weight" in cases where injunctive relief was sought against the judicial branch of state government. 44 U. S. L. W. at 4101. Given this history, the deference which the lower court chose to show the legislature of Pennsylvania at the expense of the court system of Pennsylvania is totally inexplicable.

In **Younger v. Harris,** 401 U. S. 37 (1971), this Court initially announced a carefully limited rule that, barring extraordinary circumstances, a federal court will not enjoin state criminal proceedings. The decision was an example of the principle that a court of equity should not act when there is an adequate remedy at law,[8] which principle "is reinforced by an even more vital consideration" which the Court described as (401 U. S. at 44):

> "• • • the notion of 'comity', that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways."

As subsequent cases made clear, it is this notion of comity which really underlies the decision in **Younger,** and

8. As indicated, *supra,* there is no question here that there is an adequate remedy at law, at least for those appellees already institutionalized, since § 426 of the Act gives them a right to petition for habeas corpus relief.

the **Younger** rule of judicial forbearance has not been limited to pending state criminal proceedings, but has been broadly applied wherever federal intervention would have the effect of interfering with and undermining the independence of a state judiciary to carry out its own proceedings. *See, e.g.*, **Huffman v. Pursue, Ltd.**, 420 U. S. 592 (1975) (applying **Younger** to include certain civil proceedings and to require exhaustion of state appeal procedures); **O'Shea v. Littleton,** 414 U. S. 488 (1974) (applying **Younger** in absence of pending state proceedings to preclude federal intervention which would establish basis for collateral attack on future state proceedings); *cf.* **Rizzo v. Goode,** *supra,* (applying policy of **Younger** line of cases to preclude injunctive relief against local, non-judicial, government agency).

Of particular relevance to the case at bar is this Court's determination in **O'Shea v. Littleton,** *supra,* that the principles of federalism and comity found controlling in **Younger** are equally applicable when a federal court attempts to oversee or regulate *future* state court proceedings. In **O'Shea,** suit had been brought for injunctive relief against a county magistrate and a judge alleging patterns of discrimination against black citizens with respect to the setting of bonds, sentencing, and the availability of jury trials in criminal cases. Reversing the district court's dismissal on grounds of judicial immunity and its own lack of jurisdiction to issue the injunctive relief prayed for, the Court of Appeals held that if the allegations were proved, the district court would be able to fashion appropriate injunctive relief. This Court reversed, holding, *inter alia,* that ". . . even if we were inclined to consider the complaint as presenting an existing case or controversy ****'the principles of equity, comity and federalism that must restrain a federal court when asked to enjoin a state

court proceeding' [citation omitted] . . . preclude equitable intervention in the circumstances present here." 414 U. S. at 499.

The Court reasoned that the equitable decree approved in theory by the Court of Appeals would, in effect, simply establish the basis for federal intervention in future state court proceedings to adjudicate allegations of non-compliance with the federal decree. "This," said the Court, "seems to us nothing more than an ongoing federal audit of state criminal proceedings which would indirectly accomplish the kind of interference that **Younger v. Harris,** *supra,* and related cases sought to prevent." 414 U. S. at 500. *See* **Gardner v. Luckey,** 500 F. 2d 712 (5th Cir. 1974) (relying on **O'Shea** to deny relief upon plea for court-ordered reform of state public defender offices).

The abstention principle developed in the **Younger** line of cases was relied upon by the Court of Appeals for the Second Circuit in **Wallace v. Kern,** 520 F. 2d 400 (2d Cir. 1975), to invalidate an injunctive decree comparable to that in the instant case, which purported to remedy constitutionally defective bail procedures by ordering the courts of Kings County, New York, to implement a series of new procedures, including the provision of pre-trial evidentiary bail hearings on demand. The Court rejected the argument that **Younger** is limited to cases where a federal court seeks to enjoin a pending criminal prosecution, but reiterated its own prior holding that " 'under the principle known as comity a federal district court has no power to intervene in the internal procedures of the state courts." [9] (520 F. 2d at 405).

9. The court here quoted from its per curiam order in one of two earlier appeals in the **Wallace** case in which it reversed a preliminary injunction ordering court personnel to place certain *pro se* motions on the court's calendar. **Wallace v. Kern,** 481 F. 2d

While expressing sympathy with the lower court's objectives, the **Wallace** court warned that reform of the state penal system was not the responsibility of federal courts. And it specifically rejected the argument that the intrusion into state affairs was not substantial, stating at p. 408:

> "Here, the federal court did not invite state officials to submit a plan for a bail hearing which would be consistent with due process requirements. It rather directed its own procedures for state hearings in considerable detail. This constitutes, in our view, federal judicial legislation. . . ."

The magnitude of the intrusion in the present case is even greater than in **Wallace.** Here, the lower court did not simply interfere with the power of the state courts to create appropriate rules for matters within their jurisdiction, but actually undermined the state's constitutional balance between the judicial and legislative branches by assigning cases to the court system without any constitutional requirement that they be so assigned.

There is the very clearest and most direct clash of federal and state authority when a federal court attempts to regulate the procedures of a state court system. Considerations such as these led the Court of Appeals for the First Circuit in **Ad Hoc Committee on Judicial Administration v. Commonwealth of Massachusetts,** 488 F. 2d 1241 (1st Cir. 1973), *cert. denied* 416 U. S. 986 (1974), to declare simply non-justifiable a complaint in a federal court alleging that delay in the Massachusetts court system constituted a denial of due process and praying the federal court to order and oversee implementation of appropriate reform programs. The conclusion reached in **Ad Hoc Committee** in response to a direct request to impose federal regulation upon a state court system is no less applicable when the same result is achieved indirectly; ". . . it would be both unprecedented and unseemly for a federal judge to attempt a reordering of state priorities." 488 F. 2d at 1245-46. *See* **Gardner v. Luckey,** *supra,* 500 F. 2d at 715; **Inmates of Attica Correctional Facility v. Rockefeller,** 477 F. 2d 375, 382-383 (2d Cir. 1973) (judicial incapacity to enforce state duty to investigate and prosecute those connected with prison rioting).

9. (Cont'd.)
621 (2d Cir. 1973), *cert. denied* 414 U. S. 1135 (1974). In a second interlocutory appeal at 499 F. 2d 1345, *cert. denied* 420 U. S. 947 (1975), the court had invalidated a preliminary injunction ordering the release of all prisoners not brought to trial on demand within a specified time period. The court there held that, as a constitutional matter, the requirement of a "speedy trial" must be evaluated on a case-by-case basis, and that in the absence of a constitutional foundation for its order, "[t]his is not the proper business of the federal courts, which have no supervisory authority over the state courts and have no power to establish rules of practice for the state courts." 499 F. 2d at 1351.

C. The Mere Fact That a Federal Court Has Jurisdiction Over Certain Executive Officers Does Not Give That Court Power Over the State Judicial System, None of Whose Officers Is Before It.

The present case was brought against three named officers of the Executive Department of the Commonwealth of Pennsylvania. No attempt was made to join any representative of the courts of Pennsylvania in the suit, and, indeed, there was no reason to believe that the Pennsylvania courts would be involved in any relief that was granted in this case. Nevertheless, when plaintiffs drew up their proposed order, they sought to impose duties upon the Pennsylvania courts for an indeterminate period of time, and the court below adopted plaintiffs' proposal.

Because the Eleventh Amendment prohibits individuals from suing a state in the federal courts, suits such as

this one are brought against the state officers whose conduct a plaintiff may wish to enjoin. See **Ex parte Young,** 209 U. S. 123 (1908). Because the state cannot be named a party in a suit such as the one presently before the Court, a federal court cannot enjoin state action generally, but is limited in framing an injunctive order to enjoining the future conduct of the state officers named as parties defendant in the action before it. **Edelman v. Jordan,** 415 U. S. 651 (1974).

Certainly the executive officers named as parties defendant in this litigation in no way control the Pennsylvania judicial system, and the fact that the court below had the power to enjoin the activities of the executive departments involved through the presence of their officers as parties defendant gave the court no power over the Pennsylvania courts. For, in gauging the extent of their equity power in a given case, the federal courts cannot make their injunctions run beyond the scope of the lawful authority of the defendant officers under state law.

In **Wyatt v. Aderholt,** 503 F. 2d 1305 (5th Cir. 1974), suit was brought against the Governor and certain Alabama officials responsible for the state's mental health programs to declare a constitutional right to treatment and implement appropriate standards. Since the Governor had stipulated to minimum standards required by the Constitution, the Court of Appeals did not have to consider whether such standards were, in fact, required or "whether it is within the province of a federal district court, three-judge or single judge, to prescribe standards as distinguished from enjoining the operation of such institutions while constitutional rights are being violated." 503 F. 2d at 1317. On the other hand, the court held that the stipulated standards were binding only on the Governor, the legislature not having been joined as a party defendant. The court continued (*id*):

"Governor Wallace contends such stipulations are not binding on him or the Alabama legislature. As a party to the stipulations, through counsel, we hold the Governor has for his part agreed that these standards are minimally acceptable under the Constitution. The Alabama legislature presents a different problem. Clearly the Governor is without authority to agree to the expenditure of funds required to implement such a broad spectrum of standards when such a decision under Alabama law is reserved to the legislature. That the legislature was not a party to the stipulations in question or to this law suit reenforces this manifest principle of governmental organization. It is the Governor's role to propose relief to the legislature and having stipulated the standards, to use his best efforts to accomplish the relief."

Again in **Norris v. State Council of Higher Education,** 327 F. Supp. 1368 (E. D. Va. 1971), *aff'd per curiam* 404 U. S. 907 (1971), the court refused to order the defendant Governor or the State Council of Higher Education to prepare a plan for desegregation of the state colleges since, under state law, each institution was controlled by its board of visitors so that "the persons necessary for adjudicating this phase of the case have not been sued," *id.* at 1373.

Similarly, in the instant case, no party before the lower court has authority to impose procedures upon the state court system; that authority has been delegated by the Pennsylvania Constitution to the Pennsylvania Supreme Court. Pennsylvania Constitution, Article 5, Section 10(c).[10]

10. The allocation of responsibilities among the three branches of government is made by the people through the state constitution or by the legislature, subject to executive veto and judicial review.

III. CONCLUSION.

The district court was not unconscious of the fundamental issues of federalism involved in this case. It stated (39a, n. 16):

> ". . . We are aware of the problems facing courts when they attempt to fashion procedures protecting interests within the liberty and property language of the Fourteenth Amendment and we are sensitive to the claim that courts are 'good at defending cases, bad at drafting legislation . . .'
> . . . Our action is not intended to pre-empt the state which is free to develop its own safeguards so long as they are as fully effective as these which we set out . . ."

Nonetheless, while the Court did, in fact, afford the *legislature* an opportunity to constitute a neutral tribunal in accordance with its decree, it did not hesitate to order the judiciary—immediately, and until such time, if ever, as the legislature should act—to provide the prescribed hearings, not only to all juveniles committed in the future but, within 120 days, to all juveniles presently incarcerated pursuant to the invalid legislation. This was despite the fact that the procedural apparatus thus fastened upon the state court system was conceded by the court below not to be required by the federal Constitution; and the Pennsylvania Supreme Court was not even a party to the proceedings below.

Such callous intervention by a federal court into the internal affairs of a sovereign state government, particularly its court system, and all the more when the Supreme Court was not a party to the proceeding, is completely at odds with established principles of federalism and comity.

Wherefore, the Pennsylvania Supreme Court as *amicus curiae* respectfully requests that if this Court does not reverse the order of the court below in its entirety, at the very least the order be modified to the extent that it imposes any duty upon the courts of the Commonwealth of Pennsylvania.

Respectfully submitted,

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